

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: September 15, 2020

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|                                    |  |
|------------------------------------|--|
| MIDLAND TRUST COMPANY,             | *                                      |
| <i>Guardian of the property of</i> | *                                      |
| M.S.M., a minor,                   | *                                      |
|                                    | UNPUBLISHED                            |
|                                    | *                                      |
| Petitioner,                        | *                                      |
|                                    | No. 14-1186V                           |
|                                    | *                                      |
| v.                                 | *                                      |
|                                    | Special Master Gowen                   |
|                                    | *                                      |
| SECRETARY OF HEALTH                | *                                      |
| AND HUMAN SERVICES,                | Damages; Off-Table Injury; Diphtheria- |
|                                    | Tetanus-acellular Pertussis (DTaP);    |
|                                    | Haemophilus Influenzae Type B (Hib);   |
| Respondent.                        | *                                      |
|                                    | Inactivated Polio (IPV); Pneumococcal  |
|                                    | Conjugate (PCV); Hepatitis B (Hep B);  |
|                                    | Rotavirus; Febrile Status Epilepticus; |
|                                    | Encephalopathy; Challenge-Rechallenge; |
|                                    | Absence of SCN1A Mutation.             |
| * * * * *                          | *                                      |

*Renee J. Gentry*, The Law Office of Renee J. Gentry, Washington, DC, for petitioner.<sup>1</sup>  
*Christine M. Becer*, United States Department of Justice, Washington, DC, for respondent.

## DECISION ON DAMAGES<sup>2</sup>

On December 10, 2014, a petition was filed on behalf of M.S.M., a minor, under the National Vaccine Injury Compensation Program.<sup>3</sup> Petition (ECF No. 1). On March 11, 2013, at approximately six months old, M.S.M. received vaccinations for diphtheria-tetanus-acellular

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<sup>1</sup> Ms. Gentry was substituted for attorney Cliff Shoemaker while this claim was in the damages phase. Petitioner's Consented Motion to Substitute Attorney filed October 24, 2019 (ECF No. 142).

<sup>2</sup> Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court's website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court's website, each party has 14 days to file a motion requesting redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court's website without any changes.** *Id.*

<sup>3</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to 34 (2012) ("Vaccine Act" or "the Act"). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

pertussis (“DTaP”), haemophilus influenza type B (“Hib”); inactivated polio (“IPV”); pneumococcal conjugate (“PCV”); hepatitis B (“hep B”); and rotavirus. The petition and subsequent filings alleged that these vaccines caused an acquired epileptic encephalopathy. Petition; *see also* Petitioner’s (“Pet.”) Pre-Hearing Brief (ECF No. 82) at 19, 29; Pet. Post-Hearing Brief (ECF No. 123) at 55. Respondent recommended against compensation. Respondent’s Report filed February 26, 2016 (ECF No. 41). Each party submitted expert reports and an entitlement hearing was held on October 2 – 3, 2017. Transcript (ECF Nos. 118, 120). Following the submission of post-hearing briefs, I issued a ruling concluding that the petitioner, on behalf of M.S.M., was entitled to compensation based on a showing of causation-in-fact. Ruling on Entitlement filed July 30, 2019 (ECF No. 131).

Midland Trust Company (“petitioner”) has been appointed as the guardian of the property of M.S.M.’s estate and has been recognized in that capacity to be the petitioner in this claim. *See* Pet. Ex. 127, filed February 23, 2020 (ECF No. 148-2); Pet. Mot. to Amend Case Caption filed August 3, 2020 (ECF No. 161), granted by Order entered August 5, 2020 (ECF No. 164).

On September 14, 2020, respondent filed a proffer on an award of compensation, which indicates petitioner’s agreement to compensation on the terms set forth therein. Proffer (ECF No. 166). The proffer is attached hereto as Appendix A.

**Consistent with the terms of the proffer, I hereby award the following compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a):**

- A. A lump sum payment of \$1,239,414.94, representing compensation for life care plan expenses in the first year after judgment (\$57,776.86), lost future earnings (\$931,638.08), and pain and suffering (\$250,000.00), in the form of a check payable to Midland Trust Company, guardian of the property of M.S.M., a minor, for the benefit of M.S.M.**
- B. A lump sum payment of \$32,036.18, representing compensation for satisfaction of an Amerigroup Community Care Medicaid lien, payable jointly to petitioner and Optum Subrogation Services, and mailed to:**

**Optum Subrogation Services  
L-3994  
Columbus, OH 43260-3994  
Optum File #: SN11675627  
Tax ID #: 41-1858498  
Attn: Veronica Butler**

**Petitioner agrees to endorse this payment to Optum Subrogation Services.**

- C. An amount sufficient to purchase the annuity contract, subject to the conditions described in the proffer.**

Accordingly, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with the terms of the proffer and this decision.<sup>4</sup>

**IT IS SO ORDERED.**

s/Thomas L. Gowen

Thomas L. Gowen  
Special Master

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<sup>4</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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| <p>MIDLAND TRUST COMPANY,<br/><i>Guardian of the property of</i><br/><i>M.S.M., a minor,</i></p> <p>v.</p> <p>SECRETARY OF THE DEPARTMENT OF<br/>HEALTH AND HUMAN SERVICES,</p> <p>Respondent.</p> | <p>)<br/>)<br/>)<br/>)<br/>)<br/>)<br/>)<br/>)<br/>)<br/>)</p> | <p>No. 14-1186V<br/>Special Master Gowen</p> |
|--|--|--|

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

In his Ruling on Entitlement issued on July 30, 2019, Special Master Gowen found that a preponderance of the evidence supported petitioner's claim that the diphtheria-tetanus-acellular pertussis, haemophilus influenza type B; inactivated polio; pneumococcal conjugate; hepatitis B; and rotavirus vaccines administered to M.S.M. on March 11, 2013, and December 26, 2013, caused an encephalopathy which is responsible for sequelae including her developmental delay and continued seizure activity. *See* Ruling on Entitlement (Document 131, filed on July 30, 2019). Respondent now proffers the following regarding the amount of compensation to be awarded.<sup>1</sup>

**I. Items of Compensation**

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<sup>1</sup> The parties have no objection to the amount of the proffered award of damages. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(f), to seek review of the special master's July 30, 2019 ruling on entitlement, finding petitioner entitled to an award under the Vaccine Act. This right accrues following issuance of the damages decision.

A. Life Care Items

The respondent engaged life care planner, M. Virginia Walton, M.S.N., RN, FNP, CLCP, and petitioner engaged Nancy Bond, M.Ed., CCM, CLCP, to provide an estimation of M.S.M.'s future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in the Special Master's Ruling on Entitlement. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for M.S.M., attached hereto as Tab A.<sup>2</sup> Petitioner agrees.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, M.S.M. will not be gainfully employed in the future. Therefore, respondent proffers that M.S.M. should be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for M.S.M.'s lost future earnings is \$931,638.08. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that M.S.M. should be awarded \$250,000.00 in actual pain and suffering. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Medicaid Lien

Respondent proffers that M.S.M. should be awarded funds to satisfy an Amerigroup Community Care Medicaid lien in the amount of \$32,036.18, which represents full satisfaction

of any right of subrogation, assignment, claim, lien, or cause of action Amerigroup Community Care may have against any individual as a result of any Medicaid payments Amerigroup Community Care has made to or on behalf of M.S.M. from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about March 11, 2013, under Title XIX of the Social Security Act.

## **II. Form of the Award**

The parties recommend that the compensation provided to M.S.M. should be made through a combination of lump sum payments and future annuity payments as described below, and request that the Special Master's decision and the Court's judgment award the following:<sup>3</sup>

A. A lump sum payment of \$1,239,414.94, representing compensation for life care expenses in the first year after judgment (\$57,776.86), lost future earnings (\$931,638.08), and pain and suffering (\$250,000.00), in the form of a check payable to Midland Trust Company, guardian of the property of M.S.M., a minor, for the benefit of M.S.M.

B. A lump sum payment of \$32,036.18, representing compensation for satisfaction of an Amerigroup Community Care Medicaid lien, payable jointly to petitioner and Optum Subrogation Services, and mailed to:

Optum Subrogation Services  
L-3994  
Columbus, OH 43260-3994

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<sup>2</sup> The chart at Tab A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

<sup>3</sup> Should M.S.M. die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, lost future earnings, and future pain and suffering.

Optum File #: SN11675627  
Tax ID #: 41-1858498  
Attn: Veronica Butler

Petitioner agrees to endorse this payment to Optum Subrogation Services.

C. An amount sufficient to purchase the annuity contract,<sup>4</sup> subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A attached hereto, paid to the life insurance company<sup>5</sup> from which the annuity will be purchased.<sup>6</sup> Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner only so long as M.S.M. is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total

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<sup>4</sup> In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>5</sup> The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A. M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

<sup>6</sup> Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-Contingent Annuity

The petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as M.S.M. is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of M.S.M.'s death.

3. Guardianship

The petitioner has been appointed the guardian of the property of M.S.M.'s estate. *See* Exhibit 127 (Document 148-2, filed on February 23, 2020).

**III. Summary of Recommended Payments Following Judgment**

- A.** Lump Sum paid to the petitioner.: \$1,239,414.94
- B.** Medicaid lien: \$32,036.18
- C.** An amount sufficient to purchase the annuity contract described above in section II. C.

Respectfully submitted,

JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

DARRYL R. WISHARD  
Assistant Director  
Torts Branch, Civil Division

*/s/Christine M. Becer*  
CHRISTINE M. BECER  
Trial Attorney  
Torts Branch, Civil Division  
U. S. Department of Justice  
P.O. Box 146, Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Direct dial: (202) 616-3665

Dated: September 14, 2020



## Appendix A: Items of Compensation for M.S.M.

Page 2 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Lump Sum Compensation Year 1 | Compensation Years 2-4 | Compensation Year 5 | Compensation Year 6 | Compensation Year 7 | Compensation Year 8 | Compensation Year 9 | Compensation Year 10 |
|-----------------------|------|---|---|------------------------------|------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|
|                       |      |   |   | 2020                         | 2021-2023              | 2024                | 2025                | 2026                | 2027                | 2028                | 2029                 |
| Wipes                 | 4%   |   |   | 74.88                        | 74.88                  | 74.88               | 74.88               | 74.88               | 74.88               | 74.88               | 74.88                |
| Seizure Alarm         | 4%   |   |   | 719.00                       | 71.90                  | 71.90               | 71.90               | 71.90               | 71.90               | 71.90               | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   |                              |                        |                     | 205.00              | 20.50               | 20.50               | 20.50               | 20.50                |
| Stroller              | 4%   |   |   | 989.00                       | 197.80                 | 197.80              | 197.80              | 197.80              | 197.80              | 197.80              | 197.80               |
| Shower Chair          | 4%   |   |   | 48.99                        | 8.17                   | 8.17                | 8.17                | 8.17                | 8.17                | 8.17                | 8.17                 |
| Bedrails              | 4%   |   |   | 121.27                       | 20.21                  | 20.21               | 20.21               | 20.21               | 20.21               | 20.21               | 20.21                |
| Supportive Chair      | 4%   |   |   | 3,700.00                     |                        |                     |                     |                     |                     |                     |                      |
| OT                    | 4%   | * | M |                              |                        |                     |                     |                     |                     |                     |                      |
| PT                    | 4%   | * | M |                              |                        |                     |                     |                     |                     |                     |                      |
| ST                    | 4%   | * | M |                              |                        |                     |                     |                     |                     |                     |                      |
| Mileage: PT/OT        | 4%   |   |   | 81.60                        | 81.60                  | 81.60               | 81.60               | 81.60               | 81.60               | 81.60               | 81.60                |
| Mileage: ST           | 4%   |   |   | 79.97                        | 79.97                  | 79.97               | 79.97               | 79.97               | 79.97               | 79.97               | 79.97                |
| CMT/Attendant Care    | 4%   | M |   | 37,440.00                    | 37,440.00              | 53,568.00           | 53,568.00           | 53,568.00           | 53,568.00           | 53,568.00           | 53,568.00            |
| Group Home            | 4%   | M |   |                              |                        |                     |                     |                     |                     |                     |                      |
| Medical Day Program   | 4%   | M |   |                              |                        |                     |                     |                     |                     |                     |                      |
| Lost Future Earnings  |      |   |   | 931,638.08                   |                        |                     |                     |                     |                     |                     |                      |
| Pain and Suffering    |      |   |   | 250,000.00                   |                        |                     |                     |                     |                     |                     |                      |
| Medicaid Lien         |      |   |   | 32,036.18                    |                        |                     |                     |                     |                     |                     |                      |
| Annual Totals         |      |   |   | 1,271,451.12                 | 50,596.68              | 65,464.68           | 65,673.79           | 65,489.29           | 65,774.89           | 65,884.09           | 65,993.17            |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 4 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 11 | Compensation Year 12 | Compensation Year 13 | Compensation Year 14 | Compensation Year 15 | Compensation Year 16 | Compensation Year 17 | Compensation Year 18 |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       |      |   |   | 2030                 | 2031                 | 2032                 | 2033                 | 2034                 | 2035                 | 2036                 | 2037                 |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| OT                    | 4%   | * | M |                      | 2,565.00             | 2,565.00             | 2,565.00             |                      |                      |                      |                      |
| PT                    | 4%   | * | M |                      | 2,025.00             | 2,025.00             | 2,025.00             |                      |                      |                      |                      |
| ST                    | 4%   | * | M |                      | 2,475.00             | 2,475.00             | 2,475.00             |                      |                      |                      |                      |
| Mileage: PT/OT        | 4%   |   |   | 81.60                | 81.60                | 81.60                | 81.60                | 65.82                | 65.82                | 65.82                | 65.82                |
| Mileage: ST           | 4%   |   |   | 79.97                | 79.97                | 79.97                | 79.97                |                      |                      |                      |                      |
| CMT/Attendant Care    | 4%   |   | M | 53,568.00            | 92,736.00            | 92,736.00            | 92,736.00            | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           |
| Group Home            | 4%   |   | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Medical Day Program   | 4%   |   | M |                      |                      |                      |                      | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Annual Totals         |      |   |   | 66,110.77            | 112,461.28           | 112,583.08           | 111,759.08           | 197,272.33           | 197,272.33           | 197,272.33           | 197,289.13           |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 6 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 19 | Compensation Year 20 | Compensation Year 21 | Compensation Year 22 | Compensation Year 23 | Compensation Year 24 | Compensation Year 25 | Compensation Year 26 |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       |      |   |   | 2038                 | 2039                 | 2040                 | 2041                 | 2042                 | 2043                 | 2044                 | 2045                 |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| OT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| PT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| ST                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Mileage: PT/OT        | 4%   |   |   | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                |
| Mileage: ST           | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| CMT/Attendant Care    | 4%   | M |   | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           |
| Group Home            | 4%   | M |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medical Day Program   | 4%   | M |   | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Annual Totals         |      |   |   | 197,373.13           | 197,473.93           | 197,637.73           | 197,772.01           | 197,839.21           | 197,940.01           | 198,040.81           | 198,103.81           |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 8 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 27 | Compensation Year 28 | Compensation Year 29 | Compensation Year 30 | Compensation Year 31 | Compensation Year 32 | Compensation Year 33 | Compensation Year 34 |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       |      |   |   | 2046                 | 2047                 | 2048                 | 2049                 | 2050                 | 2051                 | 2052                 | 2053                 |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| OT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| PT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| ST                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Mileage: PT/OT        | 4%   |   |   | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                |
| Mileage: ST           | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| CMT/Attendant Care    | 4%   | M |   | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           | 162,240.00           |
| Group Home            | 4%   | M |   |                      |                      |                      |                      |                      |                      |                      | 151,483.91           |
| Medical Day Program   | 4%   | M |   | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Annual Totals         |      |   |   | 198,171.01           | 198,204.61           | 198,238.21           | 198,271.81           | 198,305.41           | 198,372.61           | 198,439.81           | 187,784.40           |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 10 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 35 | Compensation Year 36 | Compensation Year 37 | Compensation Year 38 | Compensation Year 39 | Compensation Year 40 | Compensation Year 41 | Compensation Year 42 |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       |      |   |   | 2054                 | 2055                 | 2056                 | 2057                 | 2058                 | 2059                 | 2060                 | 2061                 |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| OT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| PT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| ST                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Mileage: PT/OT        | 4%   |   |   | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                |
| Mileage: ST           | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| CMT/Attendant Care    | 4%   |   | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Group Home            | 4%   |   | M | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           |
| Medical Day Program   | 4%   |   | M | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Annual Totals         |      |   |   | 187,877.40           | 188,015.40           | 188,183.40           | 188,380.80           | 188,616.00           | 188,880.48           | 189,182.88           | 189,480.96           |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 12 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 43 | Compensation Year 44 | Compensation Year 45 | Compensation Year 46 | Compensation Year 47 | Compensation Year 48 | Compensation Year 49 | Compensation Year 50 |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                       |      |   |   | 2062                 | 2063                 | 2064                 | 2065                 | 2066                 | 2067                 | 2068                 | 2069                 |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| OT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| PT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| ST                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Mileage: PT/OT        | 4%   |   |   | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                |
| Mileage: ST           | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| CMT/Attendant Care    | 4%   |   | M |                      |                      |                      |                      |                      |                      |                      |                      |
| Group Home            | 4%   |   | M | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           |
| Medical Day Program   | 4%   |   | M | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                      |
| Annual Totals         |      |   |   | 189,816.96           | 190,148.76           | 190,514.04           | 190,883.64           | 191,282.52           | 191,681.52           | 192,114.00           | 192,550.80           |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.

Annual amounts shall increase at the rates indicated in column "G.R." above, compounded annually from the date of judgment.

Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.



## Appendix A: Items of Compensation for M.S.M.

Page 14 of 14

| ITEMS OF COMPENSATION | G.R. | * | M | Compensation Year 51 | Compensation Year 52 | Compensation Year 53 | Compensation Year 54 | Compensation Year 55 | Compensation Year 56 | Compensation Year 57 | Compensation Years 58-Life |
|-----------------------|------|---|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------------|
|                       |      |   |   | 2070                 | 2071                 | 2072                 | 2073                 | 2074                 | 2075                 | 2076                 | 2077-Life                  |
| Wipes                 | 4%   |   |   | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                | 74.88                      |
| Seizure Alarm         | 4%   |   |   | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                | 71.90                      |
| Seizure Alarm Sensor  | 4%   |   |   | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                | 20.50                      |
| Stroller              | 4%   |   |   | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80               | 197.80                     |
| Shower Chair          | 4%   |   |   | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                 | 8.17                       |
| Bedrails              | 4%   |   |   | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                | 20.21                      |
| Supportive Chair      | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                            |
| OT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                            |
| PT                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                            |
| ST                    | 4%   | * | M |                      |                      |                      |                      |                      |                      |                      |                            |
| Mileage: PT/OT        | 4%   |   |   | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                | 65.82                      |
| Mileage: ST           | 4%   |   |   |                      |                      |                      |                      |                      |                      |                      |                            |
| CMT/Attendant Care    | 4%   |   | M |                      |                      |                      |                      |                      |                      |                      |                            |
| Group Home            | 4%   |   | M | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91           | 151,483.91                 |
| Medical Day Program   | 4%   |   | M | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00            | 22,750.00                  |
| Lost Future Earnings  |      |   |   |                      |                      |                      |                      |                      |                      |                      |                            |
| Pain and Suffering    |      |   |   |                      |                      |                      |                      |                      |                      |                      |                            |
| Medicaid Lien         |      |   |   |                      |                      |                      |                      |                      |                      |                      |                            |
| Annual Totals         |      |   |   | 193,016.88           | 193,247.88           | 193,713.96           | 194,117.16           | 194,381.76           | 194,713.44           | 194,915.04           | 194,296.34                 |

Note: Compensation Year 1 consists of the 12 month period following the date of judgment.

Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.

As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/conservators(s) of the estate of M.S.M. for the benefit of M.S.M., for lost future earnings (\$931,638.08), pain and suffering (\$250,000.00), and Yr 1 life care expenses (\$57,776.86): \$1,239,414.94.

As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and Optum Subrogation Service, as reimbursement of a Medicaid lien : \$32,036.18.

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Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.